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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,795	02/15/2002	Frank Olschewski	21295/41	5943

29127 7590 06/15/2005

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LEXINGTON, MA 02421

EXAMINER

NGUYEN, PHU K

ART UNIT	PAPER NUMBER
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2673

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/683,795

Applicant(s)

OLSCHEWSKI ET AL.

Examiner

Phu K. Nguyen

Art Unit

2673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-18 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 3, 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119


- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____


PHU K. NGUYEN
PRIMARY EXAMINER
GROUP 2300

Art Unit: 2673

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 6-7 are rejected under 35 U.S.C. 103(a) as unpatentable by Hellmuth et al. (Hellmuth, "U.S. Pat. No. 5,795,295) in view of Demandolx et al., "Multicolour analysis and local image correlation in confocal microscopy" CGDemandolx').

The rejection is provided in paragraphs 4-11 of the prior office action (dated 12/14/2004).

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellmuth and Demandolx and further in view of Banitt (U.S. Pat. No. 5,963,247) and Lemelson (U.S. Pat. No. 6,400,980).

The rejection is provided in paragraphs 12-20 of the prior office action (dated 12/14/2004).

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellmuth in view of Demandolx and further in view of Rittman, 111 et al. (Rittman", U.S. Pat. No. 6,575,969).

The rejection is provided in paragraphs 21-26 of the prior office action (dated 12/14/2004).

RESPONSE TO APPLICANT'S ARGUMENT.

The rejection above has met the burden of establishing a prima facie case of obviousness in which all the teachings of the claimed components and incentives to supporting the combination of these components have been clearly cited.

Applicant did not specifically point out the deficiencies in the cited references except in one paragraph (page 9, lines 10-18). However, Applicant's argument in this paragraph relates to a deficiency in Hellmuth's background, not Hellmuth's teaching. Examiner does not agree to Applicant's argument, which is "Applicants would like to draw the Examiner's attention to the background of the invention section of Hellmuth, which must be considered in its entirety not only for what it says, but also for what it does not say" (emphasis added). Examiner established a prima facie case of obviousness with citations of related portions, and Applicant should point out the deficiencies, if there are any, of the references and the claimed features in the claims (emphasis added). In this case, Applicant just argues in general the procedure of examining without any specific arguments related to the claimed features. Accordingly, this rejection is remained as stated above.

Claims 3 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12-18 are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

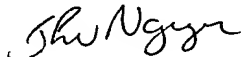
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phu K. Nguyen whose telephone number is (571) 272 7645. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, bipin Shalwala can be reached on (571) 272 7681. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phu K. Nguyen
June 10, 2005


PHU K. NGUYEN
PRIMARY EXAMINER
GROUP 2300